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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 28th April 2011

No. 4125—li/1-(BH)-59/2000-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 10th January 2011 in I.D. Case No. 245 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of (1) Executive Engineer, Mayurbhanj Irrigation Division, Baripada (2) Executive Engineer, Deo Head Works Division, Karanjia and its Workman Shri Dukhabandhu Behera was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 245 OF 2008

(Previously registered as I.D. Case No. 10 of 2001 in the file of the P.O.,
Labour Court, Bhubaneswar)

The 10th January 2011

Present :

Shri Raghbir Dash, O.S.J.S. (Sr. Branch),
Presiding Officer, Industrial Tribunal,
Bhubaneswar.

Between :

The Managements of —

- | | |
|---|----------------------|
| (1) Executive Engineer, | .. First-party—No. 1 |
| Mayurbhanj Irrigation Division, Baripada. | |
| (2) Executive Engineer, | .. First-party—No. 2 |
| Deo Head Works Division, Karanjia. | |

And

Shri Dukhabandhu Behera, S/o Late Sankunja Behera, At Ankura (Garasahi), P.O. Karanjia, Dist. Mayurbhanj.	.. Second-party—Workman
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Appearances :

Shri P. K. Routray, Asst. Engineer	.. For the First-party—No. 1
Shri S. N. Das, J.C.	.. For the First-party—No. 2
Shri T. Lenka, Advocate.	.. For the Second-party—Workman

AWARD

This is a reference under Section 10 of the Industrial Disputes Act, 1947 (for short, the 'Act') made by the Government of Orissa in the Labour & Employment Department vide their Order No. 2493—li/1 (BH)-59/2000-LE., Dt. 24-2-2001 which was originally referred to the Presiding Officer, Labour Court, Bhubaneswar for adjudication but subsequently transferred to this Tribunal for adjudication vide Labour & Employment Department's Order No. 4138—li/21-32/2007-LE., Dt. 4-4-2008. The Schedule of reference runs as follows : —

"Whether the termination of the services of Shri Dukhabandhu Behera, N.M.R. (Amin) by the Executive Engineer, Deo Head Works Division, Karanjia with effect from the 8th July 1993 is legal and/or justified ? If not, what relief Shri Behera is entitled to ?"

2. In his claim statement the workman has taken the stand that he was working as an 'Amin' under the Executive Engineer, Mayurbhanj Irrigation Division, Baripada (First-party No. 1) with effect from the 1st January 1988 on N. M. R. basis. He was working under the Subdivisional Officer, Karanjia Irrigation Subdivision, Karanjia which was initially under the administrative control of the Executive Engineer, Mayurbhanj Irrigation Division (for short, 'M.I.D.') but subsequently placed under the control of the Executive Engineer, Deo Head Works Division, Karanjia (First-party No. 2) (for short, 'D.H.W.D.'). He worked as such from 1-1-1988 to 7-7-1993 continuously. Thereafter, he was refused employment without complying with the statutory provisions of the Act. The disengagement being illegal, the workman be reinstated in service with full back wages.

3. The first-parties have filed written statements separately. In his written statement, the Executive Engineer, M.I.D. has taken the stand that the workman was engaged as an N.M.R. in Karanjia Investigation Subdivision, Karanjia for investigation survey work of Deo Project. He used to be engaged with effect from the 1st January 1988 as and when required for the said work. As per the Annexure to the written statement, the workman was engaged for the periods from the 1-1-1988 to 30-5-1988, 11-10-1988 to 20-3-1989, 21-6-1989 to 10-8-1989, 1-12-1989 to 31-5-1990 and 1-7-1990 to 10-6-1991. Out of the aforesigned periods of engagement he had been engaged through labour contractor for the periods from 21-6-1989 to 10-8-1989, 1-7-1990 to 28-2-1991 and 1-4-1991 to 10-6-1991. The workman was neither issued with any order of engagement nor any order of retrenchment by the Executive Engineer, M.I.D.

The Subdivisional Officer, Karanjia Investigation Division in which the workman was so engaged was transferred to the control of Deo Canal Division, Karanjia with effect from the 1st June 1991. Sometime thereafter the work concerning that subdivision along with the staff working in that subdivision was transferred to the control of Deo Canal Division.

4. The Executive Engineer, D.H.W.D. in his written statement has pleaded facts which find place in the written statement of the Executive Engineer, M.I.D. It is further pleaded that no N.M.R. personnel was handed over to the D.H.W.D. at the time of transfer of Karanjia Irrigation Subdivision. However, from 1-11-1991 to 15-12-1991 the workman had been engaged to work in D.H.W.D.

through labour contractor. It is further pleaded that on 1-10-1991 Karanjia Irrigation Subdivision was transferred to remain under the control of D.H.W.D. and that the services of the workman had been discontinued prior to creation of D.H.W.D. As such, the question of retrenchment of the workman by the Executive Engineer, D.H.W.D. does not arise.

5. The following issues have been settled for adjudication :—

ISSUES

- (i) "Whether the termination of services of Shri Dukhabandhu Behera, N.M.R. (Amin) by the Executive Engineer, Deo Head Works Division, Karanjia with effect from the 8th July 1993 is legal and/or justified ?
- (ii) If not, to what relief Shri Behera is entitled ?"

6. The workman has examined himself as W.W. No. 1 and has exhibited documents marked Exts. 1 to 10. The first-party No. 1 has examined the present Assistant Engineer, Rairangpur Irrigation Subdivision as M.W. No. 1 and first-party No. 2 has examined one of its Office Assistants as M.W. No. 2, Exts. A to C have been marked.

FINDINGS

7. *Issue No. (i)*—From the pleadings and the evidence adduced on behalf of the management it is found that Karanjia Irrigation Subdivision was initially under the control of the Executive Engineer, M.I.D. till 31-5-1991. On 1-6-1991 it was brought under the control of Bankabal Irrigation Division No. II, Rairangpur (since defunct). With effect from the 1st October 1991 it remained under the administrative control of the Executive Engineer, D.H.W.D.

The Executive Engineer, M.I.D. has admitted in his written statement that during the period from 1-1-1988 to 10-6-1991 the workman had worked in Karanjia Irrigation Subdivision as an N.M.R., though with breaks. It is contended that out of the said period the workman had worked for some periods through labour contractor. Though it is specifically pleaded that from 21-6-1989 to 10-8-1989, 1-7-1990 to 28-2-1991 and 1-4-1991 to 10-6-1991 the workman was engaged through labour contractor, no official record is produced to be exhibited in this case. It is not clarified by the management as to how the said periods of engagement allegedly through labour contractor should not be taken into account while determining the period of engagement of the workman under the management for the purpose of Section 25-B of the Act. Admittedly, the workman was being engaged to do work for the Karanjia Irrigation Subdivision and therefore, the periods the workman is said to have been engaged through contractor are to be taken into account while determining the period of continuous service the workman has rendered for the management. He has worked in between 1-1-1988 and 10-6-1991, though with short breaks. According to the management, the workman had been engaged till 31-5-1991. The number of days the workman was actually engaged during the last twelve months preceding 31-5-1991 comes to 283 days, if calculated on the basis of the particulars mentioned by the first-party No. 1 in the Annexure to its written statement. Therefore, the workman is under the protection of Section 25-F of the Act. Admittedly, there was no compliance of the provisions contained in Section 25-F of the Act which is mandatory in nature.

8. The first-party No. 1 takes a queer stand that it had neither engaged nor disengaged the workman. Since it is admitted that the workman had worked under it though on N.M.R. basis it is

not understood as to how the first-party No. 1 has taken such a plea. Definitely the workman was engaged by the first-party No. 1 and was allowed to work for about three and half years. The witness examined by the first-party No. 1 has stated in his affidavit evidence that the workman had been engaged to work from 1-1-1988 to 10-6-1991 and thereafter his whereabouts was not known to the management as he had never been engaged in any work by the management. During cross-examination it was suggested to the workman that he had voluntarily left the work. But, there is no pleading that the workman had abandoned the job. In his affidavit evidence M.W. No.1 has further stated that an N.M.R. is free to come and also free to go whenever he/she likes. It appears, the management is not aware of the provisions of the Act. Otherwise such a plea could not have been taken by the management. In the absence of evidence from the side of the management, it is not to be accepted that the workman had abandoned his job. Ext. 6 is a copy of a document marked without objection which purports to have been issued by the Executive Engineer, Deo Irrigation Division addressed to the Collector, Mayurbhanj, Baripada on the complaint of the workman. This letter originated on 24-4-1993. It reveals that after transfer of the Karanja Irrigation Subdivision to Deo Head Works Division on 1-10-1991 the workman had made a complaint possibly on refusal of employment to which the Executive Engineer, Deo Irrigation Division had answered taking the plea that the workman had never worked under his Division since the creation of the Division and that since the period of complaint related to Mayurbhanj Irrigation Division, the Executive Engineer of the latter Division should be asked to answer on the workman's retrenchment. Thus, it is found that much prior to 24-4-1993 the workman had made representation challenging his disengagement. So, it cannot be believed that he had voluntarily abandoned the job.

M.W. No.1 in his affidavit evidence has stated that claiming reinstatement after ten years of alleged disengagement is barred by the Law of Limitation. There is no limitation prescribed under the statute for raising an industrial dispute. That apart, the workman had not remained silent till the industrial dispute under reference was raised before the Labour Authority. As it appears from Ext. 6 the workman had raised objection before other authorities. Even in his affidavit evidence he has stated that he along with some other workers filed a case [O.A. No. 1319 (C)/1993] before the Orissa Administrative Tribunal, Cuttack Bench, Cuttack which is not challenged by the first-parties in course of cross-examination.

The plea of abandonment of service is not acceptable. There was an abrupt discontinuation of the workman's employment on 10-6-1991 as pleaded in the written statement. According to the workman, his service was terminated with effect from the 8th July 1993. Even in the reference the legality of termination of service of the workman with effect from the 8th July 1993 has been referred for adjudication. The workman being not in a position to adduce documentary evidence had made a prayer before the Labour Court, Bhubaneswar (then the I.D. Case was on the file of the Presiding Officer, Labour Court, Bhubaneswar) to direct the management to produce the N.M.R. Attendance Register and Payment Vouchers from 1-1-1988 to 7-7-1993. The management instead of agreeing to cause production vehemently objected to the petition and on 11-10-2007 the Presiding Officer, Labour Court, Bhubaneswar passed order rejecting the petition on the grounds that the workman did not disclose as to the place of his engagement and the period thereof, he had not filed any appointment letter and order of termination and he had not produced any document regarding merger of the subdivision with Mayurbhanj Irrigation Division. Apparently, the workman being poor did not challenge the order before any higher forum. His petition having been rejected the management could not be compelled to produce the relevant records in its custody. Admittedly,

the workman was engaged as an N.M.R. It is quite obvious that N.M.Rs. are not issued with any order of appointment. Therefore, he was not in a position to produce any document for the satisfaction of the Court. Be that as it may, the management being the custodian of records like Attendance Register and Wage Register/Payment Vouchers, it ought to have produced those records to make a clean breast disclosure that the workman's name did not find place anywhere in those records. That would have also shown as to on which date the workman was engaged for the last time. Due to non-production of those documents adverse inference has to be drawn against the management and it is to be held that most probably the workman had worked under the first-party till 7-7-1993. Even if presumption cannot be extended to that extent, then even on the admission of the management it is to be held that the workman was disengaged from employment with effect from the 15th December 1991. Because in the written statement of the first-party No. 2 and the affidavit evidence of M.W. No. 2 it is stated that the workman had been engaged on daily wage basis from 1-11-1991 to 15-12-1991 and was paid by the defunct Deo Irrigation Subdivision. Since it is held that the workman had completed more than one year of continuous service, his disengagement either with effect from the 15th December 1991 or 8th July 1993 is illegal.

9. Issue No. (ii)—The workman claims that he was working as an Amin though on D.L.R. basis. It is not on record as to how many N.M.R. Amins had been engaged at the relevant time and whether any of them junior to him were allowed to continue but he was disengaged. It appears from the pleadings of the first-parties that the disengagement occurred consequent upon transfer of the Karanjia Irrigation Subdivision from the Executive Engineer, Bankabal Irrigation Division No. II, Rairangpur to the Executive Engineer, Deo Head Works Division, Karanjia which took place on 1-10-1991. The retrenchment cannot be justified on the ground of such transfer. It appears, the Executive Engineer, D.H.W.D., Karanjia refused employment to the workman consequent upon such transfer. Since the workman was working in Karanjia Irrigation Subdivision which was ultimately brought under the control of the Executive Engineer, D.H.W.D., the latter is liable to provide the relief which the workman is entitled to get under this Award. It is not in the knowledge of this Tribunal as to whether the first-party No. 2 is still engaging N.M.R. Amins. If it is no more in need of an Amin, then it is not known as to when for the last time the management disengaged any N.M.R. Amin. It is also not known whether the job which the workman used to perform is now being performed by a regularly appointed Amin. Therefore, it is not possible to ask the first-party No. 2 or reinstate the second-party. On the other hand, if any N.M.R. Amin is still under the employment of the first-party No. 2, who was engaged after 1-1-1988, then the second-party is entitled to be reinstated. As to back wages, it is to be said that the management did not avail the services of the second-party for about seventeen years. In U.P. State Brassware Ltd. *Vrs.* Udai Narayan Pandey, AIR 2006 (S.C.) 586, it is observed that an industry may not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all to it and/or for a period that was spent unproductively as a result whereof the employer would be compelled to go back to a situation which prevailed many years ago namely, when the workman was retrenched. In Jagbir Singh *Vrs.* Haryana State Agriculture Marketing Board, 2009 AIR (SCW) 4824, it is observed that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention to the prescribed procedure. It is also observed by the Hon'ble Supreme Court that relevant factors to be considered for giving relief to a workman are the nature of appointment, the period of appointment, the availability of job, etc.

10. Keeping in mind the facts and circumstances narrated above, this Tribunal holds that the workman be reinstated in service with 25% of back wages if any N.M.R. Amin, who has been in employment of the first-party No. 2 after 1-1-1988 is still continuing on the Roll of the first-party No. 2 as on the date of this Award. If not, then it is presumed that the first-party No. 2 is no more in need of any N.M.R. Amin and therefore, the workman be paid compensation of Rs. 1,00,000 (Rupees one lakh) only in lieu of reinstatement and back wages. The Management No. 2 to implement the Award within a period of two months of publication of this Award in the Official Gazette.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH
10-1-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar

RAGHUBIR DASH
10-1-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar

By order of the Governor
P. K. PANDA
Under-Secretary to Government